INDEX

Table of Cases Cited

	PAGE
People v. No. 24 Board of Education, 245 Ill. 334, 29 LRA NS 42	27
People v. Pierson, 176 N. Y. 201, 68 NE 243	20
People v. Weiner, 271 Ill. 74, 110 NE 870 (873)	17
People v. Zimmerman, 278 U. S. 63	43
Reynolds v. U. S., 98 U. S. 145	20
St. Louis I. M. & S. Ry. Co. v. Starbird, 243 U. S. 592	43
Smith v. Cahoon, 283 U. S. 553	46
State v. Delaney, 1 N. J. Misc. 619, 122 Atl. 890	25
Stromberg v. Cal., 283 U. S. 359	36
U. S. v. Macintosh, 283 U. S. 605	21, 32
Watson v. Jones, 13 Wall (U. S.) 679, 728	16, 19, 20, 24, 26
Weiss v. District Board, 76 Wis. 177 (212)	12
Yick Wo v. Hopkins, 118 U. S. 356	44

INDEX

Miscellaneous Citations

	PAGE
12 ALR 1436	44, 45
54 ALR 1104	44, 45
Bible	
Acts 3:22, 23	6
Acts 4:19	7
Acts 5:34-39	8
Acts 20:20	5
Acts 24:14	12
1 Corinthians 9:16	4
Isaiah 43:10-12	5
Isaiah 61:1-3	5
John 18:37	5
2 Kings 10:19	12
Luke 20:25	35
Mark 13:9	7
Matthew 10:7-15	5
Matthew 24:14	4, 16
1 Peter 2:21	5, 6
Philippians 3:3	12
Black's Law Dictionary	12
Blackstone Commentaries, Chase 3d ed. 5-7	30
Cooley, Constitutional Limitations, 8th Ed., p. 968	18
p. 1229	17
Fosdick, The Secret of Victorious Living (1934), pp. 99-109	32, 33
Freund, The Police Power, p. 133, Sec. 143	22
2 McQuillan, p. 726, Sec. 764	45
Pacelli, Eugenio Cardinal (Brooklyn Tablet, October 10, 1936)	34
Pope Leo XIII, Encyclical (Boston Pilot, February 15, 1890)	33

INDEX

Miscellaneous Citations

PAGE

Strong, Exhaustive Concordance of the Bible
"Dictionary of the Words in the Greek Testament," p. 44, No. 3000 12

"Dictionary of the Words in the Hebrew Bible," p. 114, No. 7812 12

Statutes Cited

Constitution of Idaho, Article 1 26

Article 20 26

Constitution of New Jersey (preamble) 34

Constitution of Pennsylvania, Article I 23

Constitution of the United States, Fourteenth Amendment 3, 9, 10, 11, 12, 14, 16, 36, 42, 44

Judicial Code, Sec. 237 (28 U. S. C. A. 344) 1

Ordinance of the City of Griffin, Ga. ... 2, 9, 10, 11, 15, 21, 26, 30, 36, 39, 42, 46, 47

IN THE

Supreme Court of the United States

October Term, 1937

No. 391

ALMA LOVELL,
Appellant,
against
CITY OF GRIFFIN,
Appellee.

APPEAL FROM
COURT OF APPEALS OF
STATE OF GEORGIA

APPELLANT'S BRIEF

Opinions Below

The Opinion of the Court of Appeals of the State of Georgia appears at page 16 of the Record, and is reported in 55 Ga. App. 609, 191 S. E. 152. The Opinion of the Court of original jurisdiction (Record page 6) is not reported.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under section 237 of the jurisdictional code (U. S. C. A. Title 28, section 344), which reads as follows: "A final judgment or decree in any suit of the highest court of the state in which a decision in the suit could be had, . . . where is drawn in question the validity of a statute of any state, on the ground of it being repugnant

to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ of error shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may, in its decision, award execution or remand the cause to the court from which it was removed by the writ."

The Appeal Is Timely

The judgment of the Court of Appeals of Georgia was entered on the 11th day of March, 1937. On March 31, 1937, an order was entered by said Court denying a motion for rehearing. On May 18, 1937, the Supreme Court of Georgia entered its final order denying the issuance of a writ of certiorari to review the judgment of the Court of Appeals. The three months period therefore began to run on May 18, 1937, the date of the denial of the petition for a writ of certiorari.

The petition for allowance of an appeal to the United States Supreme Court was presented to Hon. Nash R. Broyles, Chief Judge of the Court of Appeals of Georgia, and was allowed by him on the 13th day of July, 1937.

The Statute

The statute, the validity of which as construed to apply to appellant is here drawn in question, is an ordinance of the City of Griffin, Georgia, which reads as follows:

> Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the city limits of the City of Griffin, with-

out first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin.

Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance.

In holding that the ordinance is not unconstitutional because it abridges the freedom of the press, and interferes with freedom of worship and freedom of religion, in violation of the Fourteenth Amendment to the Constitution of the United States (Record page 16), the Court of Appeals of the State of Georgia applied the ordinance to the appellant and decided in favor of its validity as so applied.

In refusing to pass upon the question that the ordinance denies equal protection of the law because of arbitrary power given to the City Manager to grant or refuse a license at will, the validity of the ordinance is drawn in question, and the decision of the Court of Appeals was in favor of its validity.

Statement

On June 29, 1936, appellant was tried and convicted in the Recorder's Court for the City of Griffin for violation of the ordinance herein quoted. She was adjudged guilty and was sentenced to fifty days in jail in default of payment of a fine of $50.00.

A police officer saw the appellant hand a pamphlet to a resident of Griffin and thereupon arrested her. Appellant admitted that she distributed literature and further testified as follows:

I am consecrated to Jehovah God and worship God in spirit and in truth, am an ordained minister of Jehovah God, sent forth by His command to preach the gospel of God's kingdom under Christ Jesus, and am therefore one of Jehovah's witnesses. I worship Almighty God by obeying His commandments to go from place to place and tell others of God and His kingdom. My work as such minister is done under the direction of the Watch Tower Bible & Tract Society, which is a corporation organized under the laws of Pennsylvania, the chartered purpose being as follows:

> "The purpose for which the corporation is formed is the dissemination of Bible truths in various languages by means of the publication of tracts, pamphlets, papers, and other religious documents, and by the use of all other lawful means which its Board of Directors, duly constituted, shall deem expedient for the furtherance of the purpose stated."

At the time of my arrest I was engaged in preaching the gospel of God's kingdom. This gospel concerns the kingdom for which people have prayed for centuries, that the will of God might be done on earth as it is done in heaven. We bring to the people the proofs that the time is at hand for the establishment of the kingdom of Jehovah God. The present disturbed condition of the nations, with the perplexity and distress prevailing among the people, are among the evidences that Satan's rule over the earth is nearing its end, and will be followed by God's kingdom which will bring righteousness and peace to all people who are willing to hear and obey Almighty God.

I was doing this work in obedience to God's law which says, "And this gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come." (Matthew 24:14) I am a Christian and have entered into a covenant or agreement to do the will of God and obey His commandments. Therefore it is incumbent upon me to obey His mandate to preach the gospel. "For necessity is laid upon me; yea, woe is unto me, if I preach not the gospel!" (1 Corinthians 9:16) Other commands

to preach are found in the Bible at Isaiah 61:1-3, Isaiah 43:10-12, John 18:37, and 1 Peter 2:21, which are as follows:

"The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek: he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn; to appoint unto them that mourn in Zion, to give unto them beauty for ashes, the oil of joy for mourning, the garment of praise for the spirit of heaviness; that they might be called trees of righteousness, the planting of the Lord, that he might be glorified."

"Ye are my witnesses, saith the Lord, and my servant whom I have chosen; that ye may know and believe me, and understand that I am he: before me there was no God formed, neither shall there be after me. I, even I, am the Lord; and beside me there is no saviour. I have declared, and have saved, and I have shewed, when there was no strange god among you: therefore ye are my witnesses, saith the Lord, that I am God."

"Pilate therefore said unto him, Art thou a king then? Jesus answered, Thou sayest that I am a king. To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth. Every one that is of the truth heareth my voice."

"For even hereunto were ye called: because Christ also suffered for us, leaving us an example, that ye should follow his steps."

I was going from house to house just as Christ Jesus and His disciples did. (Matthew 10:7-15; Acts 20:20)

"And, as ye go, preach, saying, The kingdom of heaven is at hand. Heal the sick, cleanse the lepers, raise the dead, cast out devils; freely ye have re-

ceived, freely give. Provide neither gold, nor silver, nor brass in your purses; nor scrip for your journey, neither two coats, neither shoes, nor yet staves; for the workman is worthy of his meat. And into whatsoever city or town ye shall enter, inquire who in it is worthy; and there abide till ye go thence. And when ye come into an house, salute it. And if the house be worthy, let your peace come upon it: but if it be not worthy, let your peace return to you. And whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet. Verily I say unto you, It shall be more tolerable for the land of Sodom and Gomorrah in the day of judgment, than for that city."

"And how I kept back nothing that was profitable unto you, but have shewed you, and have taught you publicly, and from house to house."

I am commanded by God's Word to follow in the footsteps of Jesus and preach the gospel as He did. (1 Peter 2:21)

"For even hereunto were ye called: because Christ also suffered for us, leaving us an example, that ye should follow his steps."

If I did not obey these commandments, I would in due time be eternally destroyed. (Acts 3:22, 23)

"For Moses truly said unto the fathers, A prophet shall the Lord your God raise up unto you of your brethren, like unto me; him shall ye hear in all things whatsoever he shall say unto you. And it shall come to pass, that every soul, which will not hear that prophet, shall be destroyed from among the people."

I offer in evidence the Word of God, the Bible.

At the time of my arrest I had been calling on people at their homes. I told them about the kingdom of Jehovah. I displayed to them books and booklets which explain the gospel of the Kingdom, and gave them opportunity to secure this printed message. I further offered the people invitations to hear the Kingdom message over the radio.

The act for which I was arrested was an act of worship of Almighty God. Preaching the gospel is part of my sincere worship of Jehovah. To worship doesn't mean to go to church or go through some religious ceremony. It does mean to obey and serve God because of unselfish love and devotion to Him. I was thus worshiping God as commanded in His Word and in accordance with the dictates of my conscience.

I did not ask for a permit, because I am sent by Jehovah to do His work. His law is supreme and above every human law. To apply for a permit to do His work would be an act of disobedience to His commandment. It would be an insult to the Most High which would in time result in my eternal destruction.

I am very willing to obey all laws which do not conflict with the law of God. I am commanded in the Bible to 'render unto Caesar [the worldly governments] the things which be Caesar's, and unto God the things which be God's'. By preaching the gospel of God's kingdom from house to house I am rendering unto God the things which be God's, and no earthly power can rightly interfere with my so doing.

The Bible plainly points out that cases similar to this one now before this court would arise in these present days, because, in Mark 13:9, as an admonition to Jehovah's witnesses, are written these words:

> "But take heed to yourselves: for they shall deliver you up to councils [courts]; and in the synagogues ye shall be beaten; and ye shall be brought before rulers and kings for my sake, for a testimony against them."

The question at issue is not a new one. The early disciples of Jesus were brought into court on a charge identical with the one before this court. The disciples Peter and John were the defendants in that case, and it is recorded, in Acts 4:19, that they answered the court in these words:

> "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye."

When again these two disciples were brought into court on a like charge, a member of that court gave wise counsel to his fellow members of the council, and his language is recorded at Acts 5:34-39, to wit:

> "Then stood there up one in the council, a Pharisee, named Gamaliel, a doctor of the law, had in reputation among all the people, and commanded to put the apostles forth a little space; and said unto them, Ye men of Israel, take heed to yourselves what ye intend to do as touching these men. For before these days rose up Theudas, boasting himself to be somebody; to whom a number of men, about four hundred, joined themselves: who was slain; and all, as many as obeyed him, were scattered, and brought to nought. After this man, rose up Judas of Galilee, in the days of the taxing, and drew away much people after him: he also perished; and all, even as many as obeyed him, were dispersed. And now I say unto you, Refrain from these men, and let them alone: for if this counsel or this work be of men it will come to nought: but if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God."

As a defendant before this court I stand exactly in this position, and freely admit that at the time of being arrested I was going from house to house, preaching the gospel of Jehovah's kingdom by means of exhibiting to the people that gospel message in printed form. The State is expressly estopped from interfering with this work, by virtue of the fundamental law of the State and the nation. If the state or municipality has no legal right to interfere with such preaching of the gospel, then manifestly no one of the state or municipality could have any right or authority to issue a permit to do this very thing.

I must obey Jehovah God's law because it is superior to any law that man can make; and if the court insists upon inflicting punishment upon me because I am obeying God, then the court must take the responsibility before Jehovah God. I therefore submit my case. (Record pages 9-14)

Questions Presented

Federal questions were properly raised, and were decided adversely to the appellant.

1. Whether the ordinance of the City of Griffin here involved, as construed and applied by the Court of Appeals of the State of Georgia, unreasonably restricts and denies appellant's freedom of worship and free exercise of religion, and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

2. Whether the ordinance of the City of Griffin here involved, as construed and applied by the Court of Appeals of the State of Georgia, unreasonably restricts and denies appellant's freedom of speech and freedom of press and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

3. Whether the ordinance of the City of Griffin here involved denies to appellant the equal protection of laws, and liberty and property without due process of law, in that it requires appellant to secure written permission from the City Manager of the City of Griffin to distribute literature of any kind, and places it within the arbitrary and uncontrolled power and discretion of said official to issue such permit, and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

Specification of Errors to Be Urged

Appellant assigns the following errors in the record and proceedings in the said case:

The court below erred in holding that the ordinance of the City of Griffin here involved is not void by reason of the fact that it is in conflict with Section One of the Fourteenth Amendment to the United States Constitution in the following particulars, to wit:

(a) It denies and unduly restricts the right to worship Almighty God according to the dictates of conscience.

(b) It denies and unduly restricts the free exercise of religious belief and practice.

(c) It denies and unduly restricts freedom of speech and freedom of press.

(d) It denies liberty and the equal protection of the law.

Points for Argument

POINT I

The ordinance as construed and applied denies and unduly restricts appellant's right to worship Almighty God in accordance with the dictates of conscience.

(A) The right to religious freedom is included within the rights guaranteed under the Fourteenth Amendment to the United States Constitution.

(B) The municipality must justify any restriction on religious freedom by showing that the acts complained of violated the laws of morality, or property; infringed on personal rights, or are inimical to the safety of the state.

(C) There is no justification for application of the ordinance to the activities charged against the appellant.

(D) The application of the ordinance is invalid because no purpose of action against Christianity may be imputed to any statute.

(E) The application of the ordinance is invalid because it may not be assumed that it was within

the intention of the Board of Commissioners to enact legislation contravening the law of Almighty God.

POINT II

The ordinance in itself and as construed and applied by the Court of Appeals of the State of Georgia unreasonably restricts and denies freedom of speech and freedom of press and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

(A) Freedom of speech and freedom of press is guaranteed under the Fourteenth Amendment to the United States Constitution.

(B) The application of the ordinance is invalid because the City of Griffin did not justify such restriction and denial of free speech and free press by showing that the acts complained of were inimical to public welfare, contrary to public morals, or that they jeopardized the safety of the state.

POINT III

The Griffin ordinance in itself, and as construed and applied by the Court of Appeals of the State of Georgia, denies liberty and the equal protection of the law through the arbitrary and uncontrolled power given to the City Manager to issue permits for distribution of printed matter, and is therefore invalid under Section One of the

Fourteenth Amendment to the United States Constitution.

Summary of Appellant's Argument

Appellant is an ordained minister of Jehovah God, who at the time of her arrest was engaged in preaching the gospel from house to house in the City of Griffin. This preaching constituted an act of worship of Almighty God because done in obedience to His commandments.

The word "worship" as used in the Bible means to render service, to do service, to minister, to act as a servant. It is so used in the following places:

> "For we are the circumcision which *worship* God in the spirit."—Philippians 3:3.
>
> "But this I confess unto thee, that after the way which they call heresy, so *worship* I the God of my fathers."—Acts 24:14.

See Dr. James Strong, S.T.D., LL.D., *Exhaustive Concordance of the Bible,* "Dictionary of the Words in the Greek Testament," page 44, No. 3000.

The word "worshippers" at 2 Kings 10:19 denotes *workers* or *servants* of a heathen god. See Dr. James Strong's *Concordance,* "Dictionary of the Words in the Hebrew Bible," page 114, No. 7812.

Black's *Law Dictionary* defines "worship" as the offering of honor and adoration to the Divine Being. The Wisconsin Supreme Court states that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience.* Weiss v. District Board et al., 76 Wis. 177 (212).

Is it not reasonable then to conclude that "worship of Almighty God" means to be obedient to His commandments

and to serve Him, which service is prompted by unselfish devotion to Him.

In the appellant's testimony the commands of Almighty God to preach the gospel are set forth. The appellant engaging in such work of preaching the gospel in obedience to such commands was then engaged in the actual worship of Almighty God. The method appeals to the conscience of appellant because of the Divine mandate to preach the gospel from place to place and house to house. The appellant conscientiously believes that supreme obedience belongs to Almighty God; that she would be denying that supreme obedience to the Creator if she first asked any municipal authority for a permit or license to do what Almighty God commands her to do, and would therefore, in due time, be eternally destroyed.

Her work of ministry is unduly restricted by the Griffin ordinance. It requires her to secure a permit from the City Manager, to be issued in his discretion, to distribute any Biblical literature in Griffin. Should she desire to pass out a few copies of the Bible gratis she would be subject to the ordinance. She was arrested because she passed out some Biblical literature and a copy of a magazine to the people. This restriction constitutes a denial of the right to worship Almighty God in accordance with the dictates of conscience, for appellant conscientiously claims to be Divinely commanded to preach the gospel of Jehovah's kingdom, and it would be an act of disobedience to this command to apply to a municipal official for permission to do what the Creator of the universe commands to be done.

Freedom of worship and freedom of religion is fully guaranteed under the United States Constitution, when it does not violate the laws of morality, or property, or infringe on personal rights, or jeopardize the safety of the state. Therefore the restrictions placed on appellant's worship and Christian practice cannot be legal except the municipality justify such restriction by showing that the

acts complained of do violate the laws of morality, or property, or infringe on personal rights, or jeopardize the safety of the state. The appellee has not justified such restriction, and the ordinance as construed and applied by the Georgia Court of Appeals is invalid under the due process clause of the Fourteenth Amendment of the United States Constitution.

In the case of Holy Trinity Church v. U. S., 143 U.S. 457, this court ruled that "no purpose of action against religion can be imputed to any legislation, state or national . . . " The same case rules that the United States is a Christian nation. Therefore it may not be assumed that the Board of Commissioners of the City of Griffin intended to impute action against the Christian work engaged in by this appellant.

Blackstone has well stated the fundamental proposition that no human laws are of any validity if contrary to the Divine law. Appellant was arrested and convicted for obeying the Divine mandate to give witness to the name of Jehovah God. It may not be assumed that the Board of Commissioners of the City of Griffin intended to contravene the Supreme Law of the Creator. The Board is estopped from so doing.

The ordinance restricts freedom of speech and freedom of press. Freedom of speech and press covers the rights of expression, publication and circulation. The right to circulate published expressions is limited to those who can secure permission of the City Manager. Such restriction on speech and press is not valid unless the municipality justifies the need in a "reasonable apprehension of danger to organized government". Herndon v. Lowry, 301 U. S. 242.

The ordinance denies equal protection of the law and liberty. This is due to the absolute powers given to the City Manager to issue or refuse a permit in his discretion. In that respect the only security citizens have is the good

sense and honesty of the official. Government then becomes an affair of men and not of law.

Argument

POINT I

The ordinance as construed and applied denies and unduly restricts appellant's right to worship Almighty God in accordance with the dictates of conscience.

The Georgia Court of Appeals in its decision relied upon the decision in a similar case, to wit, that of Coleman v. Griffin, 55 Ga. App. 123 (189 SE 427). In that decision the court held that the city had the right and power to enact the ordinance and that it did not interfere with any man's religious belief. It stated:

> "A man's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the laws of the city."

The ordinance as thus construed becomes supreme. Religious beliefs are protected, but no religious *practice* is permitted which comes in conflict with a city ordinance. The veneration of images is a religious practice in some denominations. This is prohibited in Communistic Russia. It could be prohibited in Georgia under the construction of religious freedom made by the Georgia Court of Appeals.

A

The right to religious freedom is guaranteed under the Fourteenth Amendment to the United States Constitution.

Hamilton v. Regents, 293 U. S. 245;
Meyer v. Nebraska, 262 U. S. 390.

The Fourteenth Amendment to the United States Constitution does not merely denote freedom from bodily restraint, " . . . but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, *to worship God according to the dictates of his own conscience,* and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." (Italics ours)

Meyer v. Nebraska, 262 U. S. 390, 399 (1922).

The extent of this freedom is well stated by this court in the following words:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights is conceded to all. The law knows no heresy; is committed to the support of no dogma; the establishment of no sect." Watson v. Jones, 13 Wall (U. S.) 679, 728.

It is to be noted that this covers not only freedom of religious belief but also freedom of religious practice and the right to teach religious doctrines.

We agree with the Georgia Court of Appeals that the ordinance "interferes with no man's religious *belief*". It does, however, interfere with the practice of the Biblical principle: "And this gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come." (Matthew 24:14) (Record page 10) It does contravene the right to teach from house to house as the Master did (Record page 11) by causing that right to be submitted to the whim and fancy of the City Manager of Griffin.

Appellant concedes the right and authority of the municipality to enact ordinances, within delegated authority,

for the regulation of trades and callings, and for the protection of society, but maintains that such must be reasonable and must not infringe upon the inherent and natural rights of citizens under the common law and as guaranted by the state and federal constitutions, and affecting life, liberty and pursuit of happiness. While the police power must be plenary in its nature or degree, yet it must not be overlooked that this power rests in the people and it is bestowed upon their agents as a grant of authority for the purpose of protecting the health, the safety, the comfort, and the welfare of the public. Judge Cooley stated with much emphasis that "this power is subject to the limitations imposed by the federal and state constitutions upon every power of government, and will not be suffered to invade or impair the *fundamental liberties of the citizen*", *Constitutional Limitations*, p. 1229 (8th Ed.).

We present a few of the declarations in general terms on this subject of preservation of fundamental rights.

> "Under the federal and state Constitutions the individual may pursue, *without let or hindrance*, all such callings or pursuits as are innocent in themselves and not injurious to the public. These are fundamental rights of every person living under this government, and the legislature by its enactments cannot interfere with such rights." (People v. Weiner, 271 Ill. 74, 110 NE 870 (873))

In Mugler v. Kansas, 123 U. S. 623 (661), in delivering the opinion of the court, Mr. Justice Harlan said:

> "The courts are not bound by mere forms, nor are they to be misled by mere pretences. They are at liberty,—indeed, are under a solemn duty to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no

> real or *substantial relation to those subjects,* or is a palpable invasion of rights secured by fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the constitution."

No state or municipality has the right to place itself between the individual and Almighty God when such individual is engaged in a conscientious act of worship. On this point we quote from Cooley's *Constitutional Limitations* (8th Ed.), page 968:

> "No external authority is to place itself between the finite being and the Infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

In Holy Trinity Church v. U. S., 143 U. S. 457, at page 459, in discussing the case as to its religious bearing, Mr. Justice Brewer said:

> "But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people,"

and he adds,

> "This is historically true. From the discovery of this continent to this present hour, there is a single voice making this affirmation."

An analysis of the decisions above cited convinces one that the domain of religious freedom is sacred. The legislative body if it enters therein must enter with fear and trembling. It cannot come between the finite creature and the Infinite Creator when said creature is endeavoring to offer homage and worship to Almighty God in a manner approved by conscience and in conformity with the written law of the Creator. Unnecessary restrictions of religion are absolutely invalid. The individual has the supreme

right to engage in any religious practice or entertain any religious belief, unless by so doing he violates the laws of morality, or the laws of property, or infringes on personal rights.

In the case before us we have an ordinance, which as applied, construed and enforced against the appellant prohibits her worship of Almighty God in the manner conscience approves, and restricts her Christian activity. It requires her to obtain permission to render homage and worship in the manner she was doing at the time of her arrest. It subjects her Divinely commissioned work to the approval of the City Manager.

B

The municipality must justify any restriction on religious freedom by showing that the acts complained of violate the laws of morality or of property, infringe on personal rights, or are inimical to the safety of the state.

This is the rule laid down in Watson v. Jones, *supra.*

It is no violation of the laws of morality to call on people at their homes and interview them concerning Jehovah's kingdom. It is not violating the laws of property to call on people at their homes and offer them printed matter containing information concerning the Bible and the purposes of Almighty God therein written. It certainly cannot be said to infringe on anyone's personal rights to bring to them the good tidings this appellant claims to be contained in the written Word of the ever-living God, Jehovah. And there is no danger to the state from such activity.

Where, then, can there be any justification for the restrictions placed on the Christian activities of this appellant?

The courts of many states have passed frequently on the question of what constitutes reasonable restriction under the police power. An examination of those decisions will disclose that in cases where there has been a

restriction of religious freedom it has come within the exception stated in Watson v. Jones, *supra*. The courts have held that when some person or organization violated the laws of morality, or property, or trespassed on personal rights, they could not justify their actions on the ground of religious freedom. A few of such decisions are cited:

Reynolds v. U. S., 98 U. S. 145;

Davis v. Beason, 133 U. S. 333, 342.

These are leading cases in which the guarantee of religious freedom was invoked. They involved Mormons who attempted to justify plural marriage on the grounds of religious freedom. This constituted a violation of the laws of morality and their contentions were not sustained.

Knowles v. U. S., 170 Fed. 409.

The right to mail birth control information was raised in this case. That also involved a violation of the laws of morality.

Personal rights of individuals were involved in the following case:

People v. Pierson, 176 N. Y. 201, 68 NE 243.

Question of the right to medical attention was involved in this case:

McDowell v. Board of Education of N. Y., 104 N. Y. Misc. 564.

Interference with right of safety of people on the streets by street meetings and bands of Salvation Army, etc., was raised in the following cases:

Mashburn v. City of Bloomington, 32 Ill. App. 244;

Commonwealth v. Plaisted, 148 Mass. 375, 19 NE 224, 226.

In the next two cases the claim of spiritualists to certain rights as a religious group was raised, but overruled by the courts largely because the court apparently considered the claims were not sincere.

New v. U. S., 245 Fed. 710, 712;

People v. Ashley (184 N. Y. App. Div. 520).

A religious group called Dukhobors have frequently considered it their religious duty to parade in the nude and have been stopped by the authorities. We do not know of any cases of this organization that reached the upper courts, but undoubtedly the same reasoning would apply. They would be prohibited from using their religious prerogatives to parade minus clothing because such would be a violation of the law of morality.

In Hamilton v. Regents, 293 U. S. 245, the question of the defense of country and safety of the state was involved.

In the citizenship case (U. S. v. Macintosh, 283 U. S. 605) the safety of the state through its right to call to arms its citizenry was involved.

Thus in practically all cases where the claims of religious freedom have been held subservient to some legislative act it has been because the acts involved came within the exception stated. In the very few state decisions in which there has been a denial of religious freedom despite failure to come within the exception, it is submitted that such decisions are contrary to the spirit and purpose of the fundamental law and the rulings of this court.

C

There is no justification for application of the ordinance to the activities charged against the appellant.

The Georgia Court of Appeals in construing and applying the ordinance to the work of the appellant made no effort to justify such application beyond the decree that a man's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the laws of the community. Such construction constitutes a complete denial of religious freedom. Of what advantage is it to have the right to believe a religious principle if you cannot act in accordance with that principle? Where is religious freedom if one entertaining a sincere religious belief may be prohibited by law from teaching such belief? A law in Georgia is all that is necessary to annihilate a

religious practice or the right to teach a religious doctrine. Let a rabid, intolerant opponent of any religious group assume the position of City Manager of Griffin and it will be impossible for any minister, or priest, or parish worker of such group to pass out prayer books, Bibles or other literature of his denomination within the limits of the municipality. If this construction be upheld as the law of the land, then in any state an anti-religious legislative body could throttle religious practice and teaching with constitutional approval. It could prohibit churches from operating; prohibit religious ceremonies, and public teaching of the Bible. There would still be religious freedom in that all could *believe* as they see fit but would have to keep still about it. Hitler and Stalin have not yet controlled the thoughts and beliefs of the people, although they do prohibit teaching of certain religious doctrines and certain religious practices.

It is submitted that the construction of this ordinance by the Georgia Court of Appeals is a dangerous and subtle innovation which can and may be used to destroy the religious freedom of all people.

The burden is on the State to justify its exercise of the police power in a particular instance. When the person assailing a law on constitutional grounds has shown a *prima facie* violation of a constitutional right, the State must then prove that the infringement is justified to protect the "health, safety or public morals" of the people.

The problems involved in determining whether a particular law is within the police power of the State are well summarized in Freund's work on "The Police Power", Page 133, Sec. 143, where he states:

> "The questions which present themselves in the examination of a safety or health measure are: does a danger exist? is it of sufficient magnitude? does it concern the public? does the proposed measure tend to remove it? is the restraint or requirement in proportion to the danger? is it possible to secure the object

> sought without impairing essential rights and principles? does the choice of a particular measure show that some other interest than safety or health was the actual motive of legislation?"

Let the proponents of the Griffin form of denial of the right of Christian activity support their argument by showing the imminent public danger, or rights involved, necessitating the infringement of constitutional rights. Let them justify the infringement through proving that preaching the gospel from house to house violates the laws of morality, or of property; or infringes on personal rights; or is inimical to the safety of the state. This they must do to satisfy the requirement that the law is a fair exercise of the police power of the state.

Turning to the cases in which courts have held that restrictions on religious freedom are unreasonable, we find the following:

> Gobitis v. Minersville School District et al, decided December 1, 1937, by the U. S. District Court of the Eastern District of Pennsylvania. [Volume and page of official report are not available at time of writing this brief.]

Two children had been expelled from the Minersville, Pennsylvania, Public Schools for refusal to participate in the school flag-saluting exercises. This refusal was based on religious grounds in that the children considered it contrary to the law of God to salute any flag. The Court held that the school-board requirement to salute the flag as a prerequisite to attendance at classes was an infringement on the liberty guaranteed them by the Fourteenth Amendment. The following is cited from the opinion:

> "Section 3 of Art. I of the Constitution of Pennsylvania provides that 'All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; . . . no human authority can, in any case whatever, control or inter-

fere with the rights of conscience. . . . ' This is but the expression of the full and free right which, as Mr. Justice Miller said in Watson v. Jones, 80 U. S. 679, in this country is conceded to all 'to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights'.

"The right of conscience referred to in the Pennsylvania Constitution was defined by Chief Justice Gibson in Commonwealth v. Lesher, 17 S. & R. 155, to be 'a right to worship the Supreme Being according to the dictates of the heart; to adopt any creed or hold any opinion whatever on the subject of religion; and to do, or forbear to do, any act for conscience' sake, the doing or forbearing [to do] of which, is not prejudicial to the public weal'. In these words that eminent jurist clearly stated the principle which underlies the constitutional provisions of all the States and which is one of the fundamental bases upon which our Nation was founded, namely, that individuals have the right not only to entertain any religious belief but also to do or refrain from doing any act on conscientious grounds, which does not prejudice the safety, morals, property or personal rights of the people.

"In applying this principle it is obvious that the individual concerned must be the judge of the validity of his own religious beliefs. Liberty of conscience means liberty for each individual to decide for himself what is to him religious. If an individual sincerely bases his acts or refusals to act on religious grounds they must be accepted as such and may only be interfered with if it becomes necessary to do so in connection with the exercise of the police power, that is, if it appears that the public safety, health or morals or property or personal rights will be prejudiced by them. To permit public officers to determine whether the views of individuals sincerely held and their acts sincerely undertaken on religious grounds are in fact based on convictions religious in character would be to sound the death knell of religious liberty. To such a pernicious and alien doctrine this court cannot subscribe."

State v. Delaney, 1 N. J. Misc. 619, 122 Atlantic 890.

Mary Delaney was found guilty of telling fortunes, under a disorderly conduct statute. She was a spiritualist medium and held forth at the First Spiritualist Church in Camden. For the sum of 25 cents she would foretell events. She received pay for her services. The church charter authorized it to practice the religion of Spiritualism.

In the Supreme Court of New Jersey the conviction was set aside on the grounds of a defective complaint. But the court also held:

> "Perhaps it should be said that the offense alleged is in fact the participation in religious services. The federal and state constitutions guarantee to all citizens religious liberty. This guaranty includes the right to entertain any religious belief, or practice any religious doctrine not infringing personal rights or violating the laws of morality and property.
>
> "The Disorderly Conduct Act cannot in my opinion be construed so as to make the acts with which the defendant was charged offenses under the act."

It is submitted that the present case is an exact parallel of the Delaney case.

VIOLATION:

Delaney: Violation of Disorderly Conduct Act.
Present case: Violation of Griffin ordinance.

DEFENSE:

Delaney: Participation in religious services.
Present case: Participation in religious services.

HOLDING:

Delaney: Disorderly Conduct Act cannot be construed to make the acts of the defendant offenses under the act.

Present case: The court may well follow the logic of the Delaney case and hold that the Griffin or-

> dinance cannot be construed to make the acts of the defendant offenses under the ordinance.

Another case showing the proper method of construing ordinances is that of the State of Idaho v. H. D. Morris, 155 Pacific 296.

Defendant in this case was arrested for violating a statute prohibiting the operating of motion picture shows on Sunday. Defendant presented on Sunday at a movie house a religious picture entitled "The Photo-Drama of Creation". The Idaho Supreme Court held:

> "To place upon the statute under consideration the construction asked for by appellant, and to hold that the use of a motion picture machine on Sunday for the purpose to which it was put by the respondent and his associates, in keeping open or operating a motion picture show in violation of the statute would be to *improperly invoke the police power* of the state.
>
> . . .
>
> "Such a construction would also bring the statute into conflict with Section 4, Article 1, and Section 19, Article 20, of the Constitution, for thereby religious liberty would be denied."

Other state decisions which have upheld restrictions on religious practices regardless of justification therefor cannot be reconciled with constitutional principles of religious freedom. If they are correct, Watson v. Jones, Church v. U. S., and similar cases are wrong, and religious liberty is such in name only.

D

The application of the ordinance is invalid because no purpose of action against Christianity may be imputed to any statute.

In the case of Church v. U. S., 143 U. S. 457; 36 Law Ed. 226, this court makes a careful examination of authori-

ties back to the time of the discovery of this continent, and makes the following positive finding:

> "These and many other matters which might be noticed add a volume of unofficial declarations to the mass of organic utterances *that this is a Christian nation.*" (Italics ours)

In the face of this declaration shall it be believed that a municipal legislative body intended to make it a nuisance to disseminate the Christian gospel from house to house without the august permission of a city official?

The decree is no *obiter dictum,* but a deliberate finding made upon careful examination and analysis of authorities. Other courts have made similar declarations. The Supreme Court of Illinois has decided that Illinois is a Christian state and that "the Bible is the inspired Word of God; that the Creator of the universe is its author". People v. No. 24 Board of Education, 245 Ill. 334; 29 LRA NS 42.

Defendant in the Church case was charged with violation of the Immigration Law prohibiting the hiring of alien labor. Defendant Holy Trinity Church contracted with a preacher residing in England to enter its service as rector and pastor, and was prosecuted under said Immigration Act. There was no question that the defendant violated the letter of the law. The court so found but said further:

> "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers."

The court also quoted Lord Coke as follows:

> "'Acts of Parliament are to be so construed as no man that is innocent or free from injury or wrong be, by a literal construction, punished or endangered.'"

> "The construction invoked (that of the application of laws against importation of foreign labor to a minister of the gospel of foreign citizenship coming to serve a congregation in this country) cannot be accepted as correct. It is a case where there was present a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil, and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute."

The commandments of Jehovah God and Christ Jesus to His people are to preach the gospel; to preach it from place to place and house to house. This is binding on all who have entered into a covenant to do the will of Jehovah, which includes the appellant. This means all who are true and sincere Christians. All of them must preach the gospel. Can any municipality then honestly claim to be Christian and enact or apply legislation to circumscribe, prohibit, or regulate the acts of those who are obeying the dictates of Christianity? Can the nation still honestly claim to be Christian and permit any subdivision thereof to interfere with the right of Christians to worship Jehovah in the manner approved by Him according to His written law? It is obvious that they cannot honestly and consistently make such claims and still apply man-made laws and ordinances in such manner as to interfere with the carrying on of a Christian work. They should either cease to make claims of being Christian or cease interfering with a Christian work.

We submit that it must be presumed that the legislative body of the appellee municipality in enacting the ordinance herein involved had in contemplation no act which

would violate the tenets of Christianity or militate against the people's exercising their right to serve Jehovah God and Christ Jesus as commanded. To hold that a legislative body can enact legislation which violates the will of Jehovah God as revealed in the Scriptures, and to hold that such legislation can be lawfully enforced, and that the state and nation can nevertheless remain Christian, is a sheer absurdity.

It would be tantamount to holding that the legislative body could, by simply enacting an ordinance, nullify the command of Jehovah God and Christ Jesus; and would give to every such body what would practically amount to a veto power over any and all decrees of the Almighty God as laid down in His Word, the Scriptures. That such a thing can be done, and the nation or state remain Christian, is impossible and logically inconceivable.

It therefore must be presumed, as a matter of legal conclusion, that the legislative body of the appellee municipality, being reasonable and not absurd, did not intend that this ordinance should apply to persons conscientiously and peaceably executing the mandate of Jehovah God to preach the gospel of the kingdom of God under His Son Jesus Christ. It must be presumed that this ordinance is limited in its application strictly to commercial transactions, and hence that the ordinance has no application whatsoever to the appellant.

That the lawmaking body is presumed to limit such ordinance to commercial transactions is emphatically and decisively determined by the words of Mr. Justice Brewer in Church v. U. S., above cited, to wit:

> "But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or nation, because this is a religious nation. This is historically true. From the discovery of the continent to the present hour there is a single voice making this assertion."

E

The application of the ordinance is invalid because it may not be assumed that it was within the intention of the Board of Commissioners to enact legislation contravening the law of Almighty God.

Blackstone, the leading exponent of the common law, states with precision and clarity the relation of the statute law to the higher law of the Creator. The law of man is definitely and explicitly stated to be subject to such higher law. We quote:

> "Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. A being independent of any other being has no rule to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him on whom he depends as the rule of his conduct. This principle therefore has more or less extent and effect in proportion as the superiority of the one, and the dependence of the other, is greater or less, absolute or limited, and consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will."
>
> . . .
>
> "The will of his Maker is called the law of nature."
>
> . . .
>
> "This law of nature, being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other. It is binding over all the globe, in all countries, at all times. *No human laws are of any validity if contrary to this;* and such of them as are valid derive all their force and all their authority, mediately or immediately, from the original.
>
> "But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason, whose office is to discover, as was

before observed, what the law of nature directs in every walk of life, by considering what method will tend the most effectively to our own substantial happiness. And if our reasons were always, as in our first ancestor before his transgression, clear and perfect, unruffled by passion, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy. But every man now finds the contrary in his own experience; that his reason is corrupt and his understanding full of ignorance and error.

"This has given manifold occasion for the benign interposition of Divine Providence, which, in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased at sundry times and in divers manners to discover and enforce its laws by an immediate and direct revelation. The doctrines thus discovered, we call the revealed or divine law, *and they are to be found only in the Holy Scriptures.*

"Upon these two foundations, the law of nature, and the law of revelation, depend all human laws. *That is to say no human laws should be suffered to contradict these.* There are, it is true, a great number of indifferent points in which the natural and the divine law leave man at his own liberty, but which are found necessary for the benefit of society to be restrained within certain limits. And herein it is that human laws have their greatest force and efficiency, for with regard to such points as are not indifferent, human laws are only declaratory of and act in subordination to the former. For instance in the case of murder. This is expressly forbidden by the divine law and demonstrably by the natural law; and from these prohibitions arise the true unlawfulness of the crime. Those human laws that annex a punishment to it do not at all increase the moral guilt or superadd any fresh obligation *in foro conscientiae,* to abstain from its perpetration. Nay, if any human law should enjoin or allow us to commit it, *we are bound to transgress the human law, or else we must offend both the natural and the divine."* — *Blackstone Commentaries,* Chase 3d ed. 5-7.

We know of no decision, ruling, statute or ordinance that has reversed or limited this clear and lucid explanation by Blackstone. Down through the ages the statesmen and lawmakers have recognized these principles. The language of the dissenting justices in U. S. v. Macintosh, 283 U. S. 605, is appropriate and in point, to wit:

> "Much has been said of the paramount duty to the state, a duty to be recognized, it is urged, even though it conflicts with convictions of duty to God. Undoubtedly that duty to the state exists within the domain of power, for Government may enforce obedience to laws regardless of scruples. When one's belief collides with the power of the state, the latter is supreme within its sphere and submission or punishment follows. But, in the forum of conscience, duty to a moral power higher than the state has always been maintained. The reservation of that supreme obligation, as a matter of principle, would unquestionably be made by many of our conscientious and law-abiding citizens. The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation. As was stated by Mr. Justice Field, in Davis v. Beason, 133 U. S. 333, 342, 'The term "religion" has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his character, and of obedience to his will.' One cannot speak of religious liberty, with the proper appreciation of its essential and historic significance, without assuming the existence of a belief in a supreme allegiance to the will of God."

Religious denominations have spoken in similar vein. Harry Emerson Fosdick presents a Protestant viewpoint on the subject of the supremacy of the Divine Law, when he tells of the resolve of 13,000 Protestant clergymen to resist any proscription of the Divine Law "Thou shalt not kill", in the following words:

> " . . . Recently twenty thousand American ministers of religion answered a questionnaire, and of that number nearly thirteen thousand said that they would

never sanction or, as armed combatants, participate in another war. Surely, that indicates a movement of thought and feeling in the religious community which at least we ought to understand. What, then, are these thirteen thousand ministers driving at?

"Some would wish it said at once that they are recovering one of the original meanings of discipleship to Jesus. . . . Now when war comes, a whole nation is fought against, so the whole nation has to fight; therefore conscription—conscription of our bodies, of our sons, in the next war, one way or another, of our daughters, of our property and, through all and climaxing all, of our consciences. It is here we dig in our heels. Our forefathers went to the lions rather than burn incense of worship before Caesar. If need be, we will follow in their train. We have watched this principle of conscription under the dire necessities of modern war creep up on us, here a little and there a little, until it invades the very sanctuary of a man's soul and seizes what belongs to God alone, his conscience. . . . We have seen with our own eyes what it means to dress a minister of Jesus Christ in uniform and send him out, even as a chaplain with the armies, not merely to do what so many suppose, serve individual wounded men in spiritual need—if that were all, there would be no question—but, as well, to bless in the name of Christ this monstrous war system, to urge men, with every Christian admonition he can think of, to the most dastardly deeds human nature is capable of as being the will of God, to put the seal of Christ's approval on the worst enemy of the human race. We mean precisely what we say: We will meet you in prison first."

Fosdick: *The Secret of Victorious Living* (1934), pages 99-109. . . .

The Catholic belief is presented as follows:

"It is an impious deed to break the laws of Jesus Christ for the purpose of obeying the magistrates . . . under the pretext of obeying the civil law." — Encyclical of Pope Leo XIII.

(Quoted from Boston *Pilot* of February 15, 1890)

> "The Church cannot refrain from reminding the people and those who govern them of their duty to submit without reserve, not only in private life, but also in public life, to the supreme dominion of God, and to the majesty of the divine law, natural and positive, *which takes precedence over all human legislation.*"—Eugenio Cardinal Pacelli.
>
> (From Brooklyn *Tablet,* October 10, 1936)

The various states in adopting their state constitutions have recognized their complete dependency upon the Creator for the blessings of life, liberty and happiness. We cite the provision of the New Jersey Constitution:

> "We the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which he hath so long permitted us to enjoy, and looking to him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution."

This dependency of the State upon the Creator is further evidenced in the fact that the clergy are called upon to invoke the Divine aid and guidance for state and national legislative bodies at their sessions. The courts use the Bible and the phrase "So help me, God" in administering the oath. The courts and public buildings are closed on the first day of the week out of deference to what is believed to be a God-given day of rest. Many court decisions recognize the supremacy of the Creator, and the divine inspiration of His Word, the Bible.

Can the state, or any municipality therein, then be heard to say that its laws are superior to the laws of Almighty God? Can the creature dictate to the Creator? The answer must be, emphatically, No. The state and its subdivisions are estopped from asserting supremacy over the laws of God.

The situation might be illustrated in this manner: Suppose the governor of a state, being duly empowered by

the legislative body, should send out representatives to all the municipalities of the state to call on the people at their homes; gather certain statistical information from them; and give to the householders pamphlets conveying information on matters of importance to the people. In many cities and towns there are very stringent canvassing ordinances, similar to the Griffin ordinance, requiring any person going from house to house to secure a permit from the police department. If a local police official should ask one of these state representatives for a permit, would he not well answer: "I do not need a permit for this work. I am authorized and directed to engage in this work in this municipality by the chief executive officer of this state. The higher law gives me the authority to here call upon the people. Your local ordinance does not at all apply to the work in which I am engaged. I will not insult the governor of this state by securing a permit from you to do work commanded by the state"?

With much greater force, then, can this appellant, or any Christian, say: "I am a representative of the Most High God, Creator of heaven and earth. I am commissioned by Him to present His message to the people. God's law is superior to all laws of man, and therefore I am not required to secure a permit from any official to engage in this work. I will not insult the Creator by asking some creature for permission to do His work. I will obey God rather than men."

Sometimes it is argued that the Scriptural citation, "Render therefore unto Caesar the things which be Caesar's, and unto God the things which be God's" (Luke 20:25), means that all men should obey all laws of the governments regardless of God's laws. It is obvious that such is not the case. The words were uttered by the Master in response to a trick question by His enemies, the Pharisees. "Caesar" represents the government. Jesus specified: Here are two authorities, the government of man, and the

Divine power. Each has certain requirements. The government of man requires obedience to its laws, payment of taxes, etc. God requires implicit obedience to His laws. Both can be obeyed if there is no conflict. But when there is conflict caused by the law of man conflicting with the law of God, the Higher law, that of the Creator, the Supreme Authority, is to be obeyed.

POINT II

The ordinance in itself and as construed and applied by the Court of Appeals of the State of Georgia unreasonably restricts and denies freedom of speech and freedom of press and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

A

Freedom of speech and press is guaranteed under the Fourteenth Amendment to the United States Constitution.

Gitlow v. N. Y., 268 U. S. 652, 666;
Stromberg v. Cal., 283 U. S. 359;
Near v. Minn., 283 U. S. 697, 707;
Grosjean v. American Press Co., 297 U. S. 233;
De Jonge v. Oregon, 299 U. S. 353.

Freedom of speech and press is the right to freely speak, write, publish and circulate sentiments on all subjects. The right of circulating is as essential to freedom of the press as is the liberty of publishing. (In re Jackson, 6 Otto 727, 24 L. Ed. 877, 879) In this modern time expression is usually by means of printed publications in the shape of periodicals, handbooks or bound volumes.

These are circulated by mail or by some form of personal distribution.

The Griffin ordinance constitutes a previous restraint on the circulation of printed matter by personal distribution in that a license or permit is required to distribute any literature of any kind. It thus covers not only the circulating of commercial matter, but also matters of public interest, historical, social, political and of religious import. It covers circulating everywhere in the city, on the streets, in public places, from house to house, and inside buildings or business places.

To one man, the City Manager, is delegated the power to permit or censor this form of expression of speech and press. Labor unions, political organizations, newspapers, magazines, religious and social welfare groups, all must secure his approval and permission to distribute any printed matter concerning their cause to the citizens.

The Court is asked to carefully consider the tremendous power placed in the hands of one official. He can dictate what can be expressed to the people. Of course, the mails are open, but it is not the American way to be limited exclusively to that form of distribution.

Little is said in the history books of the methods used by the early patriots in getting their pamphlets to the people. Many were written. Every schoolboy knows of Hamilton's handbooks, *The Federalist*. Undoubtedly some copies were circulated from house to house and person to person. Thomas Paine wrote and distributed many pamphlets in the cause of liberty. William Lloyd Garrison, no doubt, used that method in declaiming against slavery. If in those days the municipalities were afflicted with executive officers holding omnipotent powers over the distribution of literature, like the City Manager of Griffin, an important avenue of public expression would have been closed.

The cases on free speech and freedom of press largely deal with what is termed "dangerous" literature, such as

the defamatory, seditious, Communistic, or revolutionary type. Nevertheless the courts have decreed that previous restraints even on such publications must be the exception, rather than the rule, and that the penalizing of utterances "must find its justification in a reasonable apprehension of danger to organized government". Herndon v. Lowry, 301 U. S. 242.

We cite the following from Near v. Minnesota, 283 U. S. 697:

> " . . . The general principle that the constitutional guaranty of the liberty of the Press gives immunity from previous restraints has been approved in many decisions under the provisions of state constitutions.
>
> "The importance of this immunity has not lessened. While reckless assaults upon public men, and efforts to bring obloquy upon those who are endeavoring faithfully to discharge official duties, exert a baleful influence and deserve the severest condemnation in public opinion, it cannot be said that this abuse is greater, and it is believed to be less, than that which characterized the period in which our institutions took shape. Meanwhile, the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous Press, especially in great cities. The fact that the liberty of the Press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the Press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege."

There can be no question that forbidding the circulation of certain publications specifically is a violation of freedom of press.

Efforts of officials to forbid the circulation on the streets of Cleveland of Ford's anti-Jewish *Dearborn Independent* were held to violate the guaranty.

Dearborn Co. v. Fitzgerald (D. C.) Ohio, 271 Fed. 479.

An ordinance forbidding circulation of cards of the I. W. W. was held invalid as denying free speech.

Ex Parte Campbell (Col. App.), 221 Pac. 952.

In California it was also held that an anti-picketing ordinance, held valid as an exercise of police power, could not prevent sale of a newspaper published by labor organizations, though the method of sale constituted a violation of the ordinance. Such prevention, the court held, citing in the matter of Jackson, *supra,* would interfere with freedom of speech.

People v. Armentrout, 1 Pac. (2d) 556.

Then how can this ordinance be held valid? It is true that it names no publication. But it covers all publications. It may be used to prohibit all publications, or any publication. The circulation of any publication is subject to the autocratic control of the City Manager. Freedom of speech then is not regulated by law, but is under the jurisdiction of the fancy, whim, notion or caprice of the official.

It is conceded that appellant was engaged in the highest and most noble of callings. She was exercising her right to free expression by conveying to people at their homes the gracious message of the Creator, as revealed in His Word, the Bible. Because she handed to some of the people of Griffin copies of a periodical, and Bible literature, she was arrested, convicted and fined. She had failed to secure permission from the czar in control of expression of public opinion in Griffin.

B

The application of the ordinance is invalid because the City of Griffin did not justify such restriction and denial

of free speech and free press by showing that the acts complained of were inimical to public welfare, contrary to public morals, or that they jeopardized the safety of the state.

We cite the following from De Jonge v. Oregon, 299 U. S. 353 (1937):

> "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Some of the state courts have frowned upon the unreasonable restrictions as given in the Griffin ordinance. In the case of City of Chicago v. Anna Schultz, 341 Ill. 208 (1930), an ordinance was involved which provided that

> " . . . it shall be unlawful for any person, firm or corporation . . . to distribute, hand out, or scatter upon any street, alley, sidewalk, or other public place, in the City of Chicago any circular, handbill, pamphlet, card, picture, or any advertising matter whatsoever . . . "

The Court held:

> "The ordinance is not a reasonable exercise of police powers. Its strict enforcement would unreasonably hamper persons in the conduct of their affairs. In the

> broad language used in the ordinance the city has attempted to regulate and control the habits and practices of the citizen without any reasonable basis for so doing. The ordinance in its present form is an unreasonable interference with the private rights of the citizen and must be held void."

Justice Bodine, of the New Jersey Supreme Court, in the matter of the application of Nancy Cox for a writ of habeas corpus (not printed in the reports) on September 24, 1937, held:

> "The federal government may preclude one from making improper use of the mails, but I think no one would contend that it could preclude a citizen from distributing by mail historical documents or a contemporary comment upon matters of public interest. Neither may a borough, in an attempt to keep its streets clean and unlittered, forbid a citizen from handing to another citizen a document of historic and social interest."

People v. Johnson, 117 N. Y. Misc. 133, is in point. It involved a New York City ordinance which provided:

> "No person shall throw, cast or distribute any handbill, circular, card or other advertising matter whatsoever in or upon any street or public place."

The defendants were convicted of violation of the ordinance, in handing out circulars in front of a theater where a moving picture exalting the activities of the Ku Klux Klan was being exhibited. It was held that the ordinance was never intended to prevent the lawful distribution of anything other than commercial and business advertising matter, and the circular in question did not come within that category.

The Court held:

> "It would be a dangerous and un-American thing to sustain an interpretation of a city ordinance which

would prohibit the free distribution by a body of citizens of a pamphlet setting forth their views against what they believed to be a movement subversive of their rights as citizens.

"The Constitution of the State of New York provides that every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge the liberty of speech or of the press. . . .

"The ordinance within reasonable limits is a proper one, and should be sustained, but no ordinance no matter how worthy its intendment *should be permitted in any way to curtail any of the fundamental rights of the citizens.*"

It is respectfully submitted that the Griffin ordinance through its restraint upon the free expression and circulating of publications constitutes a gag law which curtails the fundamental rights of citizens and is therefore invalid.

POINT III

The Griffin ordinance in itself, and as construed and applied by the Court of Appeals of the State of Georgia, denies liberty and the equal protection of the law through the arbitrary and uncontrolled power given to the City Manager to issue permits for distribution of printed matter, and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

The Court of Appeals of Georgia held that the ordinance was not attacked on the ground that it arbitrarily

grants to the City Manager the power to grant or refuse a license at will, such power being uncontrolled by any rule or standard or provision for review.

The rule is that no particular form of words or phrases is essential to raise a Federal claim. It must be brought with "fair precision" and if the record as a whole shows either expressly or by clear intendment that a certain section of the Federal Constitution was relied upon, and the right claimed under it, the claim is to be regarded as having been adequately presented.

People v. Zimmerman, 278 U. S. 63;
Green Bay & Miss. Canal Co. v. Patten Paper Co., 172 U. S. 58;
St. Louis I. M. & S. Ry. Co. v. Starbird, 243 U. S. 592.

Applying these principles to the facts in this case we find as follows: In paragraph 2 of the demurrer of appellant in the trial court the provisions of Section One of the Fourteenth Amendment to the United States Constitution were set forth in full, and the claim made that appellant was denied the liberty of freedom of press and freedom of religion because of the arbitrary power and authority given to the City Manager.

It is respectfully submitted that the record shows a raising of this question with "fair precision", and it is therefore adequately presented.

Unlimited power and discretion is given to the City Manager of Griffin to issue or not to issue a permit for distribution of literature. There is no standard or measure by which he may draw the line and differentiate between those who may receive the permit, and those who may not. He may make such rules as he desires or such conditions as he pleases. He is the complete boss over the issuance of permits for the uses prescribed in the ordinance.

The only guaranty of the just and proper administration of this ordinance is the intelligence, the character, and

the good will of this official. And, while the present or any subsequent incumbents of the office may be possessed of all these qualities, the fact remains that the law is not of itself uniform in operation, but that its uniformity is dependent upon the mere will of the official. The ordinance thus makes the government of the City of Griffin, so far as its subject matter is concerned, a government not of laws, but of men.

The well established rule is to the effect that a statute or ordinance which vests arbitrary power with respect to an ordinary lawful business, profession, appliance, etc., in public officials without prescribing a rule of action, or, in other words, which authorizes the issuing or withholding of licenses, permits, approvals, etc., according as the designated officials arbitrarily choose, without reference to all of the class to which the statute or ordinance was intended to apply, and without being controlled or guided by any definite rule, or specified conditions to which all similarly situated might knowingly conform—is unconstitutional and void.

12 ALR 1436;
54 ALR 1104.

The decision of this Court in the case of Yick Wo v. Hopkins, 118 U. S. 356, is the leading authority on this subject. It clearly and definitely decided that an ordinance conferring arbitrary power upon the Board of Supervisors to grant or refuse permits for conduct of a laundry business was invalid as denying equal protection of the laws, within the Fourteenth Amendment to the Federal Constitution. The Court stated:

> "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.

> Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the Commonwealth 'may be a government of laws and not of men'. For the very idea that one man may be compelled to hold his life, or the means of living, *or any material right,* essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

Measured by this decision alone, we respectfully urge, the ordinance of Griffin here involved must be held to be violative of constitutional provisions.

The law is so clear and decisive that it is unnecessary to encumber this brief with discussions of the vast number of American decisions, both State and Federal, sustaining the proposition herein advanced. The trend of the authorities is well shown by the cases listed in 12 ALR 1436, 54 ALR 1104, and in the following quotation from 2 McQuillan on "Municipal Corporations", page 726, Section 764, Second Edition, which reads:

> "Notwithstanding express power may exist to enact, the ordinance must provide a uniform rule of action; it must contain permanent legal provisions, operating generally and impartially, for its enforcement cannot be left to the will or unregulated discretion of the municipal authorities or any officer of the corporation. . . . 'A public duty which the legislature has confided to the deliberative judgment or discretion of the lawmaking power of a municipality cannot be delegated by the latter to the judgment or discretion of one constituent element of that power, nor to the judgment or discretion of others.'"

The cases cited cover permits and licenses for various kinds of business, to wit, jewelry, laundry, dairy, rag picking, butcher, pharmacy, physicians, restaurants, and stables. They also cover the issuing of permits for the storing of oils; operation of steam engines, mills and shops; parades; singing; operation of musical instruments; selling securities; operation of cemeteries, and other subjects.

The precise point involved and raised in the demurrer of appellant (Record page 4) is that the ordinance abridges freedom of press and religion by prohibiting the distribution of literature of any kind in the city without permission of the City Manager. It goes far beyond the ordinary and proper exercise of the police power, and imposes unusual and unnecessary restrictions and prohibitions upon fundamental rights. The use and exercise of religious freedom and freedom of speech and press is not free, but rests upon the uncontrolled inclination and bent of the City Manager. That is not in accordance with constitutional principles.

The Griffin ordinance is invalid on its face, and the attempt is being made to enforce its penalties against appellant in violation of constitutional law. Appellant is a proper person to raise the question of its constitutionality.

Smith v. Cahoon, 283 U. S. 553.

Conclusion

Each of the Federal constitutional grounds taken separately is sufficient to warrant setting aside as invalid the ordinance of the City of Griffin here involved. Taken together, they establish conclusively that the ordinance as applied and construed by the Court of Appeals of Georgia serves to deprive appellant of basic rights guaranteed by the Federal Constitution.

The decision of the Court of Appeals of Georgia should be reversed and the appellant Alma Lovell discharged from custody and her bond released.

Respectfully submitted,

O. R. Moyle,
Counsel for Appellant.

Grover C. Powell,
of Counsel.

Supreme Court of the United States

October Term, 1937

No. 331

ALMA LOVELL,
Appellant,

against

CITY OF GRIFFIN,
Appellee.

Appeal from
Court of Appeals
State of Georgia

BRIEF OF APPELLEE

Hughes Dorsey,
Sumter M. Lowry,
Attorneys for Appellee.

H. C. Tebeau,
Griffin, Georgia,
Of Counsel.

INDEX

Subject Index

	Page
Statute Drawn in Question	1
Questions Presented	2
(A) It is claimed the ordinance in question denies to appellant freedom of worship	2
(B) It is claimed the ordinance in question denies to appellant freedom of speech and of the press	2
(C) It is claimed the ordinance in question denies to appellant due process of law and the equal protection of the law	2
Statement of Appellee's Contentions	3
(A) The ordinance in question is not aimed at religious worship or practies and has no legal relation to the right of freedom of worship	3
(B) The ordinance does not infringe the constitutional right of free speech or the freedom of the press, and if it does, appellant does not belong to the class of persons embraced within these constitutional guaranties	4
(C) The appellant failed to raise the question of due process of law in a manner to bring that issue before the Court on its merits	4
Argument	6
(A) Pertinent portions of appellant's demurrer	6
(B) The ruling of the Court of Appeals of Georgia	7
Citation of Authorities	10
Appellant Did Not Properly Raise the Question of Due Process	15

INDEX

Table of Cases Cited

Page

Coleman vs. Griffin, 55 Ga. App. 123 15

Commonwealth vs. Herr, 229 Pa. St. 132 11

Commonwealth vs. Plaisted, 148 Mass. 375 10

Curtis vs. Helen, 171 Ga. 256 15

Fidelity & Casualty Co. of New York vs. Freeman, 109 Fed. 847 13

Iroquois Transportation Co. vs. DeLaney, etc. Co., 205 U. S. 354 13

Jordan vs. State, 172 Ga. 857 15

Lee vs. State of New Jersey, 207 U. S. 67 13

Louisville & Nashville Ry. Co. vs. Woodford, 234 U. S. 46 16

McMasters vs. State, 21 Okla. Crim. 318 11

Missouri, etc. Rd. Co. vs. Cade, 233 U. S. 642 13

Palmer vs. Phinizy, 151 Ga. 589, 591 15

Reynolds vs. United States, 98 U. S. 145 11

Smith vs. People, 51 Colo. 271 10

State vs. Big Sheep, 75 Mont. 219 11

State vs. Marble, 72 Ohio St. 21 10

State vs. Neitzel, 69 Wash. 567 11

Streitch vs. Board of Education, 34 S. D. 169 11

IN THE

Supreme Court of the United States

October Term, 1937

No. 391

ALMA LOVELL,
Appellant,

against

CITY OF GRIFFIN,
Appellee.

Appeal from
Court of Appeals of
State of Georgia.

THE STATUTE DRAWN IN QUESTION

The appellant was convicted of violating the following ordinance of the City of Griffin, Georgia, to-wit:

> "Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the city limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin.

"Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance."

It is not denied that she violated the ordinance. The appeal is based on the contention that the ordinance is so far in conflict with certain provisions of the Constitution of the United States as to render invalid the conviction of the appellant thereunder.

QUESTIONS PRESENTED

In her brief, appellant asserts that the following Federal questions were properly raised in the Trial Court and decided adversely to her, to-wit:

(1) That the ordinance in question, as applied by the Trial Court and the Court of Appeals of Georgia, denies to appellant that freedom of worship guaranteed to her by the Constitution of the United States.

(2) That the ordinance as construed and applied by the Trial Court and the Court of Appeals of Georgia denies to appellant that freedom of speech and freedom of the press guaranteed to her by the Constitution of the United States.

(3) That the ordinance denies to appellant due process of law and the equal protection of the law, for that her right to distribute literature in the City of Griffin, Georgia is made to depend upon the arbitrary discretion of the City Manager of

the City of Griffin as to whether he would issue the permit contemplated by the ordinance.

Appellee relies upon the following propositions to sustain the judgment of the Court of Appeals of Georgia, to-wit:

> 1. The terms of the ordinance speak for themselves and speak plainly. No reference therein to religion or to religious worship or to religious practices is to be found. It contains nothing touching the right to speak or write freely and as one may choose. Obviously, it is wholly unrelated to any problem of religion or any question of freedom of public discussion or the right or practice of saying or writing what one thinks.

On the contrary, in its nature this ordinance is a police measure which deals with the practice of distributing circulars, handbooks, advertising and other literature within the City limits of Griffin, Georgia. If it be kept in mind that every municipality is faced with a sanitary problem in removing from its streets papers, circulars and other like materials, the reasons for the adoption of such an ordinance become apparent. Clearly there is a permissible field for such a regulation within constitutional limitations. The point material to the present discussion is that nothing in the ordinance is aimed at or relates to the right to worship as one may prefer, or the right to speak or write with complete freedom. The fact the appellant may have in her own mind associated her forbidden activities with her religious convictions does not establish any legal or constitutional connection between them.